

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

BRENDA K. VESTAL,

Plaintiff,

v.

CIVIL ACTION NO. 1:18-00422

NANCY A. BERRYHILL,  
Acting Commissioner of Social Security,

Defendant.

**MEMORANDUM OPINION AND ORDER**

Pending before the court is plaintiff's motion to reopen this case and reconsider its Order of July 5, 2018. See ECF No. 11). That Order dismissed this case pursuant to Federal Rule of Procedure 4(m) based upon plaintiff's failure to timely serve defendant. On June 19, 2018, plaintiff was advised that the record did not reflect that service had been made within the requisite 90 days. See ECF No. 9.\* That Order further advised plaintiff "to demonstrate good cause for not serving the defendant with process" and that "[f]ailure to respond to this order within ten days or an insufficient showing of good cause will result in dismissal without prejudice of this case." Id.

In support of the instant motion, counsel for plaintiff states that she and her attorney did not receive the court's

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\* The Order dismissing the case erroneously stated that plaintiff "was notified of her failure to effectuate service upon defendant within 120 days after filing of the complaint." The correct time limit for service is 90 days. See Fed. R. Civ. P. 4(m).

Order of June 19, 2018. She does not, however, give a reason for plaintiff's failure to serve defendant within 90 days.

The records of the court reflect that not only was the Order of June 19, 2018 electronically mailed to both plaintiff's counsel and her secretary but that the message was successfully delivered to plaintiff's attorney. See Exhibit A (attached). Furthermore, even if plaintiff's counsel failed to receive the Order of June 19, 2018, she still has not given a reason, much less shown good cause, for her failure to make service within the requisite time period. For this reason, the court is unable to grant the relief requested at this juncture. However, the court will allow plaintiff to supplement her motion to demonstrate good cause exists for her failure to timely serve defendant. Any additional filings in support of this motion should be filed within ten (10) days of entry of this Order.

The Clerk is directed to directed to send a copy of this Order to counsel of record.

**IT IS SO ORDERED** this 12th of July, 2018.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber  
Senior United States District Judge

## EXHIBIT A

WVSD Case 1:18-cv-00422 (Vestal v. Berryhill)

Docket Entry 9 – filed on 06/19/2018 at 1:24PM EDT

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United States District Court

Southern District of West Virginia

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ORDER: The docket in this action reflects that service has not been obtained upon the defendant within 90 days of filing of the complaint. Accordingly, the Court ORDERS the Plaintiff to demonstrate good cause for not serving the defendant with process. Failure to respond to this order within ten days or an insufficient showing of good cause will result in dismissal without prejudice. Signed by Senior Judge David A. Faber on 6/19/2018. (cc: counsel of record) (arb)

1:18-cv-00422 Notice has been electronically mailed to:

Deborah K. Garton [dkgarton@frontiernet.net](mailto:dkgarton@frontiernet.net), [janeyoung@frontiernet.net](mailto:janeyoung@frontiernet.net)

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